

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG,
FACEBOOK, INC.,

Defendants.

**DECISION
and
ORDER**

10-CV-569A(F)

APPEARANCES:

PAUL A. ARGENTIERI, ESQ.
Attorney for Plaintiff
188 Main Street
Hornell, New York 14843

BOLAND LEGAL, LLC
Attorney for Plaintiff
DEAN M. BOLAND, of Counsel
18123 Sloane Avenue
Lakewood, Ohio 44107

JEFFREY A. LAKE, ESQ.
835 5th Avenue
Suite 200A
San Diego, California 92101

GIBSON, DUNN & CRUTCHER, LLP
Attorneys for Defendants
ORIN S. SNYDER,
ALEXANDER H. SOUTHWELL,
AMANDA AYCOCK, of Counsel
200 Park Avenue, 47th Floor
New York, New York 10166-0193

HARRIS BEACH LLP
Attorneys for Defendants
TERRANCE P. FLYNN, of Counsel
Larkin at Exchange
726 Exchange Street, Suite 1000
Buffalo, New York 14210

By papers filed October 17, 2011, Plaintiff moves to stay proceedings (Doc. No.

164) while Plaintiff seeks to substitute counsel for Jeffrey A. Lake, Esq., Plaintiff's co-counsel of record, who has sought to withdraw as counsel (Doc. No. 168) ("Plaintiff's motion"). Defendants' opposition was filed October 20, 2011 (Doc. No. 170). No reply has been filed by Plaintiff.

Essentially, Defendants contend Plaintiff has failed to show good cause for the requested stay because Plaintiff's co-counsel, Paul A. Argentieri, Esq., remains as one of Plaintiff's attorneys of record who should be capable of handling all matters in this case pending before the court, in particular Defendants' motion to compel (Doc. No. 154) filed October 14, 2011, to which Plaintiff's response is due October 24, 2011 (Doc. No. 163).¹ Further, as Defendants point to Plaintiff's repeated failure to comply fully with the court's prior discovery-related orders and the colorable basis, as more fully described in Defendants' pleadings, for potential risks to the integrity of the various forms of electronic records to which Defendants have been attempting, with the assistance of the court, to obtain in order to facilitate and complete expedited expert evaluation. Delay in consideration of the merits of Defendants' latest motion seeking to compel Plaintiff's full compliance with the prior orders by the court directed to Plaintiff regarding these matters will, according to Defendants, jeopardize the ability of Defendants to achieve such compliance. Given the record of Plaintiff's unusual attitude toward Plaintiff's discovery obligations, as more fully reflected in Defendants' recent request for sanctions, including contempt, against Plaintiff, the court agrees with Defendants' contention.

¹ By notice filed October 21, 2011 (Doc. No. 174) Dean Boland, Esq. of Lakewood, Ohio has been substituted for Mr. Lake as one of Plaintiff's counsel of record in this case.

In Defendants' initial motion (Doc. No. 44) seeking expedited discovery, Defendants persuaded the court that such expedited discovery as requested was warranted given the need to prevent potential loss of relevant records and information as well as the need to protect such evidence against tampering. Nothing since that time, as reflected in the various submissions and arguments presented by the parties to the court, has undermined the correctness of the court's earlier determination to proceed in that manner. Indeed, recent developments in the course of Defendants' efforts to obtain full compliance by Plaintiff with the court's discovery orders has increased the need for such expedited discovery.

In sum, given the relatively straightforward and uncomplicated issues raised by Defendants' motion, Mr. Argentieri's presumed familiarity with these questions and the need to resolve promptly Defendants' motion, and Mr. Boland's appearance as of October 21, 2011, Plaintiff has failed to establish good cause for the requested stay. Plaintiff's response to Defendants' motion to compel is due October 24, 2011; however, as an accommodation, the court *sua sponte* extends that date to **October 25, 2011, 5:00 p.m.** Defendants' reply, if any, shall be filed not later than **October 31, 2011.** Oral argument remains as originally scheduled for **November 2, 2011 at 2:00 p.m.**

CONCLUSION

Based on the foregoing, Plaintiff's motion (Doc. No. 164) is DENIED.

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dated: October 24, 2011
Buffalo, New York